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LB

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CV 11 3841

KAI CHANDLER, GEORGE
TURNER, CRAIG COOLEY,
STEPHEN DILL, NAJLA WAHEED,
AMANDA J. COOPER, DALE
BARCUS, JON BLEVINS, BLAIN
LEGE, CLAUDIA MILLER, JOSEPH
SARI, DAVID SPRAGUE, ERRIN
FORD, PATRICK HOGAN, DONNA
HONEA, RONI LEUCK, DOUGLAS
NICOLLS, DIETRICH SCHMITZ,
MICHAEL WALSH, KAREN
CABRERA, CATHERINE CLOSE,
NAZEEMA DUKHI-KHAN, JOSEPH
LOMBARDO, SUSAN HIGHT,
CYNDI OWEN, HOLLY ST.
GERMAIN, ERNEST F GOFF, LORA
HARTMAN, GENE KRAWCHUK,
PAMELA MULLINS, KELLEY
SPIGHT, ERICA BROOKS, LINDA
CROSBY, CORY HAVLIK,
SHERMAN TANG, CHRISTINE
BASFORD, PATRICIA HENRIKSON,
CINDY WARD, SAMUEL JOSEPH,
NAPOLEON WILLIAMS

CASE No.:
JUDGE:
COURTROOM:
COMPLAINT DATE:

COMPLAINT

**1. FAILURE TO PAY
OVERTIME WAGES, IN
VIOLATION OF FLSA, 29
U.S.C. §§ 201 et seq.**

DEMAND FOR JURY TRIAL

Plaintiffs,

1 vs.)

2 WELLS FARGO & COMPANY, a)
 3 Delaware corporation; WELLS FARGO)
 4 HOME MORTGAGE, INC., a)
 5 California corporation, WELLS)
 6 FARGO BANK, N.A., and DOES 1-10,)
 7 inclusive,)

8 Defendants.)

9 NATURE OF THE ACTION

10 1. Plaintiffs KAI CHANDLER, GEORGE TURNER, CRAIG
 11 COOLEY, STEPHEN DILL, NAJLA WAHEED, AMANDA J. COOPER, DALE
 12 BARCUS, JON BLEVINS, BLAIN LEGER, CLAUDIA MILLER, JOSEPH SARI,
 13 DAVID SPRAGUE, ERRIN FORD, PATRICK HOGAN, DONNA HONEA,
 14 RONI LEUCK, DOUGLAS NICOLLS, DIETRICH SCHMITZ, MICHAEL
 15 WALSH, KAREN CABRERA, CATHERINE CLOSE, NAZEEMA DUKHI-
 16 KHAN, JOSEPH LOMBARDO, SUSAN HIGHT, CYNDI OWEN, HOLLY ST.
 17 GERMAIN, ERNEST F GOFF, LORA HARTMAN, GENE KRAWCHUK,
 18 PAMELA MULLINS, KELLEY SPIGHT, ERICA BROOKS, LINDA CROSBY,
 19 CORY HAVLIK, SHERMAN TANG, CHRISTINE BASFORD, PATRICIA
 20 HENRIKSON, CINDY WARD, SAMUEL JOSEPH AND NAPOLEON
 21 WILLIAMS (collectively herein, "Plaintiffs") are current and former employees of
 22 Wells Fargo. The primary duty of the Plaintiffs involved selling residential
 23 mortgage loan products to defendants' customers. As such, their job titles were
 24 variously labeled and included such as Home Mortgage Consultant, Reverse
 25 Mortgage Consultant and/or Loan Officer, among other similar titles – hereinafter
 26 sometimes collectively referred to as "HMC." Plaintiffs worked overtime, but
 27 were not paid for it. Plaintiffs seek unpaid overtime wages and liquidated damages
 28 under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 §§ *et seq.*

(hereinafter "FLSA").

JURISDICTION

2. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331, because claims raised herein arise under laws of the United States, including but not limited to 29 U.S.C. §§ 207(a)(1), 216(b).

INTRADISTRICT ASSIGNMENT

3. Pursuant to Civil Local Rules 3-2 and 3-5, this case is properly assigned in the San Francisco division of the Court because a substantial part of the events and omissions which give rise to the claim occurred there, specifically, a substantial portion of Wells Fargo's omission to pay overtime wages and decision not to pay overtime wages occurred at Wells Fargo's corporate headquarters in San Francisco city and county.

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, subsections (b) and (c), because defendant Wells Fargo & Company has its principal place of business in this judicial district and has sufficient contacts with this judicial district that would subject it to personal jurisdiction if this district were a separate state.

PARTIES

Plaintiffs

5. Plaintiffs are current and former employees of Wells Fargo & Company, its subsidiaries and/or joint ventures. Plaintiffs' primary duty was selling loan products secured by an interest in residential property. At all times herein relevant, Wells Fargo & Company, its subsidiaries and/or joint ventures controlled or had the right to control the work of the Plaintiffs.

Defendants

6. Wells Fargo & Company is a Delaware corporation with its headquarters offices and principal place of business located in San Francisco,

1 California. Its principal business is that of a holding company for its subsidiaries
2 the largest of which is Wells Fargo Bank, N.A.

3 7. Wells Fargo Bank, N.A., is a nationally chartered bank that is
4 registered as a corporation in the State of California. It designates its main office
5 as Sioux Falls, South Dakota.

6 8. Wells Fargo Home Mortgage, Inc., is a California corporation. In
7 2004, Wells Fargo Home Mortgage, Inc., merged with Wells Fargo Bank, N.A.

8 9. As used in this Complaint, Wells Fargo & Company, Wells Fargo
9 Bank, N.A., Wells Fargo Home Mortgage, Inc., and Does 1-10 are collectively
10 referred to as "Defendants" or "Wells Fargo."

11 10. With over 3,000 financial centers from coast to coast, Wells Fargo is
12 engaged in interstate commerce.

13 11. At all times herein relevant, defendants DOES 1 - 10 were and are
14 entities whose business forms are unknown to Plaintiffs doing business in the State
15 of California and engaged in interstate commerce. Plaintiffs do not know the true
16 names and capacities of the defendants named herein as DOES 1 -10 and therefore
17 sue said defendants by fictitious names. Plaintiffs will amend this Complaint to
18 allege their true names, capacities and charging allegations when ascertained.

19 RELATED CASE / PRIOR LITIGATION

20 12. On July 1, 2005, an action was commenced in the Federal District
21 Court for the Northern District of California that was subsequently consolidated
22 into MDL Docket No. 3:06-md-01770-EMC, *In re Wells Fargo Home Mortgage*
23 *Overtime Litigation*. In that action, a collective and class of HMC plaintiffs sought
24 recovery and restitution of unpaid FLSA wages.

25 VICARIOUS LIABILITY

26 13. At all times herein relevant, the Defendants operated as a commercial
27 venture and common undertaking with such unity of interest, control and
28 ownership, using each as the instrumentality, agent, conduit, alter ego or adjunct of

1 the other, that the separate personalities of said entities no longer exist and an
2 inequitable result would follow in the litigation of these claims unless the fiction of
3 corporate separateness were disregarded.

4 14. As used in this Complaint, the term "Defendants" refers to all
5 defendants, and every allegation with respect to one defendant is an allegation with
6 respect to each and every defendant.

7 15. At all times herein relevant, Defendants and each of them were the
8 agents, servants, alter egos and/or joint venturers of and with each and every other
9 defendant. Defendants carried out a joint scheme, joint venture, common
10 enterprise, common business plan or unifying policy in all respects pertinent hereto
11 and all acts and omissions herein complained of were performed within the course
12 and scope of said joint scheme, joint venture, common enterprise, common
13 business plan and/or unifying policy. Wells Fargo and its subsidiaries and joint
14 ventures are jointly and severally liable for all claims raised in this action.

15 **FIRST CLAIM FOR RELIEF**

16 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF FLSA**

17 (By Plaintiffs against all Defendants)

18 16. Plaintiffs hereby restate, re-allege, and incorporate by reference herein
19 the paragraphs stated above in this Complaint as though fully set forth herein.

20 17. Plaintiffs performed work for Wells Fargo in excess of 40 hours per
21 week for which they were not paid overtime wages, as required under the FLSA,
22 specifically 29 U.S.C. 207(a)(1).

23 18. Defendants failed to pay overtime wages to Plaintiffs despite two
24 Department of Labor, Wage and Hour Division, Opinion Letters dated May 17,
25 1999, and February 15, 2001, which concluded that loan officers were not exempt
26 from the overtime requirements of the FLSA. Plaintiffs are informed and believe
27 and thereon allege that Wells Fargo willfully failed to pay its HMC's and Loan
28 Officers overtime wages and even willfully designated the positions of HMC and

1 Loan Officer as "Exempt" in order to unlawfully avoid the requirement to pay
2 overtime wages.

3 19. As a result of Wells Fargo's wrongful conduct, Plaintiffs have been
4 injured in amounts to be proven at trial.

5 **PRAYER**

6 WHEREFORE Plaintiffs pray for judgment against all Defendants and each
7 of them as follows:

- 8 1. Compensatory damages, including unpaid overtime wages and
9 liquidated damages;
10 2. Interest from the date such amounts were due;
11 3. Costs of suit and attorneys' fees; and
12 4. Such other and further relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand trial by jury of their claims for relief to the extent
15 authorized by law.

16
17 Dated: August 3, 2011

**CALLAHAN, THOMPSON, SHERMAN
& CAUDILL, LLP**

18
19
20 By: _____

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